

Jaafar bin Mohd Khalid v Hong Leong Bank Bhd

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
B-02(NCVC)(W)-2576–10 OF 2012

ABU SAMAH, MOHD HISHAMUDIN AND MOHAMAD ARIFF JJCA
28 JUNE 2013

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Tort — Malicious prosecution — Bankruptcy petition — Whether filing of bankruptcy proceedings against and making person bankrupt could form basis of suit for malicious prosecution — Whether tort concerned prosecution on criminal charge — Whether malicious prosecution differed from tort of malicious civil proceedings or malicious proceedings in bankruptcy — Whether absence of reasonable and probable cause must be shown to found tort of malicious civil proceedings or malicious proceedings in bankruptcy

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Hong Leong Bank Bhd ('the respondent') had entered judgment in default of appearance ('the judgment') against the Jaafar ('the appellant') in the sessions court in an action against him as guarantor in respect of a vehicle hire purchase loan ('the loan') taken by a company in which the appellant was a shareholder. The action followed the company's default in repayment of the loan. Based on the judgment, the respondent filed bankruptcy proceedings against the appellant and made him a bankrupt. The appellant, a businessman and professional tourist guide, claimed he only knew about his bankruptcy when his passport was withheld by immigration officers when he attempted to leave the country. The appellant informed the respondent that he had never guaranteed the loan and denied that the signature on the guarantee agreement was his. Following its investigations, the respondent decided to discharge the appellant of all liability and it applied to court to have his bankruptcy orders annulled and rescinded. The appellant himself never applied to set aside the judgment despite contending that the civil action against him and the judgment were fraudulent. He sued the respondent for special, general, aggravated and exemplary damages for negligence and malicious prosecution. The respondent's defence was that the appellant was in fact one of the guarantors of the loan; that all cause papers both in the civil and the bankruptcy proceedings were served on the appellant in accordance with the law and that the bankruptcy proceedings were commenced in good faith based on the judgment. The High Court dismissed the appellant's claim. He appealed to the Court of Appeal.

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Held, dismissing the appeal with costs:

- (1) The High Court was correct to hold the appellant's claim for negligence was time barred under s 6 of the Limitation Act 1953 ('Act'). Both the

- A guarantee and the hire purchase agreements were dated 7 May 1997. If at all there was any alleged negligence on the bank's part in failing to ensure the possibility of fraud happening in the processing of the loan was minimised, or in failing to detect any irregularity or fraudulent act in the loan approving process, that negligent act could only have occurred around 7 May 1997. If the six year period ran from that date, the appellant was clearly time barred as he filed his action only on 26 May 2011 (see para 20).
- (2) The appellant could not rely on s 29(a) of the Act (to say time only ran when he became aware of the alleged fraud when the immigration officers detained his passport) as his claim was not based on fraud but on negligence. On the facts, he could have sued the bank for fraud but he chose not to and preferred to sue it for negligence (see para 22).
- (3) The appellant failed to show that the respondent owed him a duty of care. His pleaded case was that he was a stranger to the bank and had nothing to do with the guarantee agreement or the hire purchase loan; that there was no commercial relationship or some kind of proximity between him and the bank. If that was the position he took, he could not in the same breath claim the bank owed him a duty of care (see para 24).
- (4) In an action for malicious prosecution, the claimant must show, *inter alia*, that the law was set in motion against him by the defendant on a criminal charge. The appellant here was never prosecuted on a criminal charge. What was set in motion against him was a bankruptcy proceeding which could not be the basis for the tort of malicious prosecution (see para 29).
- (5) Even assuming the appellant's cause of action was actually the tort of malicious civil proceedings (or malicious proceedings in bankruptcy) he still had to show absence of reasonable and probable cause. It could not be said there was absence of reasonable and probable cause as the bankruptcy proceeding was commenced based on the judgment which the appellant never thought fit to set aside. So long as there was a valid judgment the bank had a valid basis for commencing the bankruptcy proceedings (see para 34).

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[Bahasa Malaysia summary]

- Hong Leong Bank Bhd ('responden') telah memasuki penghakiman ingkar kehadiran ('penghakiman tersebut') terhadap Jaafar ('perayu') di mahkamah sesyen dalam tindakan terhadapnya sebagai penjamin berkaitan kenderaan pinjaman sewa beli ('pinjaman tersebut') yang diambil oleh syarikat di mana perayu merupakan seorang pemegang saham. Tindakan itu berkaitan kegagalan syarikat tersebut dalam membuat pembayaran balik pinjaman tersebut. Berdasarkan penghakiman tersebut, responden telah memfailkan prosiding kebangkrutan terhadap perayu dan menjadikannya seorang bankrap.

Perayu, seorang ahli perniagaan dan pemandu pelancong profesional, mendakwa dia hanya mengetahui tentang kebankrapannya apabila pasportnya ditahan oleh pegawai imigresen apabila dia cuba meninggalkan negara. Perayu memberitahu responden bahawa dia tidak pernah menjadi penjamin pinjaman tersebut dan menafikan yang tandatangan atas perjanjian jaminan itu miliknya. Berikutan siasatannya, responden memutuskan untuk melepaskan perayu daripada semua liabiliti dan ia telah merayu kepada mahkamah agar perintah-perintah kebankrapannya dimansuh dan dibatalkan. Perayu sendiri tidak pernah memohon untuk mengetepikan penghakiman tersebut meskipun berhujah bahawa tindakan sivil terhadapnya dan penghakiman tersebut adalah berunsur fraud. Dia telah menyaman responden untuk ganti rugi khas, tambahan dan teladan kerana kecuaiian dan pendakwaan berniat jahat. Pembelaan responden adalah bahawa perayu pada hakikatnya merupakan salah seorang daripada penjamin pinjaman tersebut; bahawa semua kertas guaman dalam kedua-dua prosiding sivil dan kebankrapan telah disampaikan ke atas perayu menurut undang-undang dan bahawa prosiding kebankrapan telah dimulakan dengan niat baik berdasarkan penghakiman tersebut. Mahkamah Tinggi menolak tuntutan perayu. Dia telah merayu kepada Mahkamah Rayuan.

Diputuskan, menolak rayuan dengan kos:

- (1) Mahkamah Tinggi adalah betul untuk memutuskan tuntutan perayu untuk kecuaiian telah luput had masa di bawah s 6 Akta Had Masa 1953 ('Akta'). Kedua-dua jaminan dan perjanjian sewa beli tersebut bertarikh 7 Mei 1997. Jika apapun terdapat kecuaiian yang dikatakan di pihak bank kerana gagal memastikan kemungkinan fraud berlaku dalam memproses pinjaman tersebut telahpun dikurangkan, atau kerana gagal mengenalpasti apa-apa luar aturan atau tindakan fraud dalam proses kelulusan pinjaman tersebut, bahawa perbuatan cuai hanya boleh berlaku sekitar 7 Mei 1997. Jika tempoh enam tahun bermula dari tarikh itu, perayu jelas telah luput had masa kerana dia telah memfailkan tindakannya hanya pada 26 Mei 2011 (lihat perenggan 20).
- (2) Perayu tidak boleh hanya bergantung kepada s 29(a) Akta (untuk mengatakan masa hanya bermula apabila dia menyedari fraud yang dikatakan itu semasa pegawai imigresen menahan pasportnya) kerana dakwaannya tidak berdasarkan fraud tetapi berdasarkan kecuaiian. Atas fakta itu, dia boleh menyaman bank tersebut kerana fraud tetapi dia telah memilih untuk tidak berbuat demikian dan memilih untuk menyamannya kerana kecuaiian (lihat perenggan 22).
- (3) Perayu telah gagal untuk menunjukkan bahawa responden mempunyai kewajipan berjaga-jaga terhadapnya. Kes yang diplinya adalah bahawa dia seorang yang tidak dikenali oleh bank tersebut dan tidak mempunyai apa-apa kaitan dengan perjanjian jaminan atau pinjaman sewa beli

- A tersebut; bahawa tiada hubungan komersial atau apa-apa kaitan antaranya dan bank tersebut. Jika itu kedudukan yang diambilnya maka dia tidak boleh mendakwa yang bank tersebut mempunyai kewajipan berjaga-jaga terhadapnya (lihat perenggan 24).
- B (4) Dalam tindakan kerana pendakwaan berunsur niat jahat, penuntut hendaklah menunjukkan, antara lain, bahawa undang-undang dimulakan terhadapnya oleh defendan atas pertuduhan jenayah. Perayu di sini tidak didakwa atas pertuduhan jenayah. Apa yang dimulakan terhadapnya adalah prosiding kebangkrapan yang tidak boleh menjadi
- C asas untuk tort bagi pendakwaan berunsur niat jahat (lihat perenggan 29).
- (5) Walaupun dengan mengandaikan kausa tindakan perayu sebenarnya tort untuk prosiding sivil yang berunsur niat jahat (atau prosiding berunsur niat jahat dalam kebangkrapan) dia masih perlu membuktikan ketiadaan
- D sebab yang munasabah dan mungkin. Tidak boleh dikatakan terdapat ketiadaan sebab munasabah dan mungkin kerana prosiding kebangkrapan telah bermula berdasarkan penghakiman tersebut yang mana perayu tidak memikirkan ia sesuai untuk diketepikan. Selagi terdapat penghakiman sah bank tersebut mempunyai alasan sah untuk
- E memulakan prosiding kebangkrapan itu (lihat perenggan 34).]

Notes

For cases on bankruptcy petition, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 835–836.

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Cases referred to

Caparo Industries Plc v Dickman [1990] 2 AC 605, HL (refd)

Jacobs v Vockrodt [2007] EWHC 2403, QBD (refd)

Johnson v Emerson and Sparrow (1870–71) LR 6 Ex 329 (refd)

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Loh Chiak Eong & Anor v Lok Kok Beng & Ors [2013] 1 MLJ 27, CA (refd)

Quartz Hill Consolidated Gold Mining Company v Eyre (1883) 11 QBD 674, CA (distd)

Savile v Roberts 1 Ld Raym 374, KB (refd)

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Tetuan Bee Ling & Co v Vijendran Ponniah [2010] 6 CLJ 643, CA (refd)

Legislation referred to

Bankruptcy Act 1967 s 105

Limitation Act 1953 ss 6, 29(a)

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Appeal from: Civil Suit No 22 NCVC–626 of 2011 (High Court, Shah Alam)

Mohaji Selamat (Nor Hazury Zubir with him) (Mohaji, Hazury & Ismail) for the appellant.

Tan Gian Chung (Phua Zi Jin with him) (Shook Lin & Bok) for the respondent.

Mohd Hishamudin JCA (delivering judgment of the court):

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INTRODUCTION

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[1] The plaintiff/appellant (Jaafar bin Mohd Khalid) appeals to this court.

[2] The High Court of Shah Alam had dismissed his claim against the defendant/respondent (Hong Leong Bank Bhd) for:

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- (a) the tort of negligence; and
- (b) the tort of malicious prosecution.

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THE DECISION OF THIS COURT

[3] In our judgment, this appeal must be dismissed.

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THE FACTS OF THE CASE

[4] In 2004 the defendant bank commenced a civil action against the plaintiff at the Sessions Court of Kuala Lumpur. The defendant bank sued him as one of the guarantors in respect of a hire purchase loan given by the defendant bank to a company called 'Idyllic Management Service Sdn Bhd'. The plaintiff was a shareholder in the company. The purpose of the hire purchase loan was for the purchase of a vehicle by the company. The company defaulted in its repayment to the defendant bank. The defendant bank went after the guarantors. On 15 April 2004, the defendant bank obtained judgment in default of appearance against the plaintiff.

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[5] The plaintiff failed to satisfy the default judgment. So, on 23 October 2007 the defendant bank, armed with the sessions court default judgment order, commenced bankruptcy proceedings against the plaintiff at the High Court of Shah Alam via Bankruptcy No 29–5716 of 2007. On 30 December 2009, the defendant bank succeeded in obtaining the receiving order and adjudicating order against the plaintiff.

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[6] The plaintiff, subsequently, upon learning that he had been adjudged a bankrupt went to the defendant bank to complain that he had never signed any guarantee agreement involving the hire purchase loan in question.

A [7] After some meetings between the plaintiff and the officers of the defendant bank, on 8 June 2010, the defendant bank wrote a letter to the plaintiff stating:

Sir,

B ACCOUNT: 148-83-00790-3
BORROWER: JAFFAR BIN MOHD KHALID
NRIC: 4446072/530502015551

C UNIT: WFQ2047
CASE NO: JPH(SEL)16477/2009/BN NO29-5716-2007
Reference is made to the above.

D Please take note that your liability in relation to the abovementioned account towards Messrs Hong Leong Bank Berhad has been discharged upon the investigation which has determined that the abovementioned borrower is not the actual guarantor of the vehicle bearing registration number WFQ2047. There shall be no further liability/claim in relation to the above matter with immediate effect.

Thank you.

E Yours faithfully,
On behalf of HONG LEONG BANK BERHAD

F [8] On 5 October 2010, on the application of the defendant bank, the High Court of Shah Alam, pursuant to s 105 of the Bankruptcy Act 1967, annulled the adjudicating order and rescinded the receiving order.

G [9] However, the plaintiff never applied to set aside the default judgment of the Sessions Court of Kuala Lumpur obtained by the defendant bank against him.

THE PLAINTIFF'S CASE

H [10] The plaintiff is a businessman and a professional tourist guide.

I [11] The plaintiff alleges that on 23 March 2010, at an immigration check point at the Malaysia-Thailand border (the plaintiff does not provide the precise location) his passport was detained by an immigration officer and he was prevented from leaving the country on the ground that he had been adjudged a bankrupt.

[12] The plaintiff alleges that he had never signed any guarantee agreement as a guarantor in respect of the hire purchase loan in question.

[13] He alleges that the 'guarantor signature' on the guarantee agreement was not his. A

[14] The plaintiff alleges in his evidence that he was never served with the sessions court summons; however, this fact was never pleaded by him in his statement of claim. All he said in his statement of claim was that he was not aware of the judgment and the bankruptcy proceedings (... *tidak tahu langsung mengenai Penghakiman dan Prosiding Kebankrapan* ...) (see para 10 of his statement of claim). B

[15] The plaintiff filed the instant writ action against the defendant bank for negligence and malicious prosecution on 26 May 2011, claiming special damages, general damages, aggravated damages and exemplary damages. C

THE DEFENDANT'S CASE D

[16] The plaintiff was one of the guarantors of the hire purchase loan and that all cause papers in respect of the sessions court proceedings and the Shah Alam High Court bankruptcy proceedings were duly served on the plaintiff at his last known address in accordance with the law. E

[17] The bankruptcy proceedings was done in good faith based on the sessions court default judgment. The plaintiff never applied to set aside the default judgment. F

THE CLAIM UNDER THE TORT OF NEGLIGENCE

[18] We are dismissing this claim because of the following reasons. G

[19] Firstly, we agree with the learned High Court judge that the plaintiff's claim for negligence is time barred. The claim is for the tort of negligence. Where the claim is for the tort of negligence, then, s 6 of the Limitation Act 1953 applies. Section 6 provides: H

Limitation of actions of contract and tort and certain other actions.

6(1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

(a) actions founded on a contract or on tort; I

[20] This means that the plaintiff must file his action within six years from the date of the alleged act of negligence. When did the alleged act of negligence

- A** occur? In his 'Particulars of Negligence', the plaintiff alleges that the act of negligence occurred when the defendant bank in processing the hire purchase documentation failed to ensure that there was no fraud and that the signature in the guarantee agreement was indeed that of the plaintiff. The guarantee agreement is dated 7 May 1997. The hire purchase agreement is also dated
- B** 7 May 1997. Thus the processing of the guarantee and hire purchase agreements must have taken place around this time, that is to say, 7 May 1997. If at all there is any (alleged) negligent act on the part of the defendant bank in failing to ensure that the possibility of fraud happening in the processing of the hire purchase loan was minimised, or in failing to detect any irregularity or
- C** fraudulent act in the hire purchase approving process, that negligent act could only have occurred around 7 May 1997. So the six year period begins from 7 May 1997. And if the six year period begins from 7 May 1997, then, plaintiff is clearly time barred as he filed the writ action only on 26 May 2011, that is to say, some 14 years later.

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- E** [21] However, the plaintiff contends in para 17 of his memorandum of appeal and at pp 24–25 of his written submission that time begins to run only from the time when the plaintiff became aware of the alleged fraud; and that the plaintiff became aware of the alleged fraud only in March 2010 when he was prevented from leaving the country by the Immigration Department by reason of his bankruptcy. The plaintiff relies on s 29(a) of the Limitation Act. According to this provision:

- F** Postponement of limitation period in case of fraud or mistake
- 29 Where, in the case of any action for which a period of limitation is prescribed by this Act, either —
- (a) the action is based upon fraud of the defendant or his agent or of any person through whom he claims or his agent;
- G** the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistakes as the case may be, or could with reasonable diligence have discovered it;

- H** [22] With respect, the plaintiff cannot take advantage of this provision as his claim is not based on fraud but based on negligence. On the facts, the plaintiff could have sued the defendant bank for fraud, since it is not possible for the alleged fraudulent act to have occurred without complicity on the part of the bank staff responsible for obtaining the signature of the guarantor onto the guarantee document. But for reasons best known to itself, the plaintiff chose
- I** not to, and instead preferred to sue the defendant bank for negligence.

[23] Our second ground in dismissing the plaintiff's claim for the tort of negligence against the defendant bank is that the plaintiff has failed to show

that the defendant bank owes him a duty of care. In the House of Lords case of *Caparo Industries Plc v Dickman* [1990] 2 AC 605 Lord Bridge of Harwich summarised the principle on duty of care as follows:

What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable and that the law should impose a duty of a given scope upon the one party for the benefit of the other.

[24] In the present case, it is common ground that the plaintiff is not a customer of the defendant bank. He has no account with the defendant bank. He has not taken any loan from the defendant bank. In addition to this fact, and more pertinent, the plaintiff in his pleading denies that he is a guarantor of the hire purchase loan (involving Idyllic Management Services Sdn Bhd) in favour of the defendant bank; and that the signature on the guarantee agreement is not his. In other words, it is the plaintiff's pleaded case that he is a stranger to the bank; and has nothing to do with the guarantee agreement or hire purchase agreement. His complaint is only that the defendant bank was careless in processing the guarantee agreement, thereby allowing fraud to have taken place; resulting in the plaintiff, without his knowledge, being fraudulently named as a guarantor. If the plaintiff adopts such a position, then, clearly there is no commercial relationship or some kind of proximity between the plaintiff and the defendant bank. If the plaintiff takes the position that there is no relationship or proximity between him and the defendant bank, he cannot in the same breath claim that the defendant bank owes him a duty of care.

[25] We just would like to add that it might well be that the defendant bank could have foreseen that any careless act on its part in not ensuring that fraud did not take place, when it came to processing the guarantee agreement, might result in fraud taking place and consequential financial injury to some innocent third party. However, in *Loh Chiak Eong & Anor v Lok Kok Beng & Ors* [2013] 1 MLJ 27 the Court of Appeal has ruled that (at p 41):

We are, however, prepared to accept the plaintiff's contention that the defendants, as the architects of the project, would be able to foresee that the various acts or omissions complained of, assuming for the moment that the allegations to some extent are true, would result in a delay in obtaining the CFOs and consequential financial loss to the plaintiffs. But 'foreseeability of harm or damage' is not the only test or factor in determining the existence of a duty of care. In other words, as a matter of law, foreseeability of injury or damage does not automatically lead to a

- A duty of care (see *Simaan Contracting Co v Pilkington Glass Ltd (No 2)* [1988] QB 758; and *Man B&W Diesel*). As a matter of law, there are other considerations to be taken into account as well.

THE CLAIM UNDER THE TORT OF MALICIOUS PROSECUTION

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- C [26] The plaintiff also claims against the defendant bank for the tort of malicious prosecution by reason of the bankruptcy proceedings commenced against him by the defendant bank. The plaintiff submitted that there was an absence of reasonable and probable cause since the plaintiff was never a guarantor to the hire purchase agreement in question, and that the bankruptcy order was eventually annulled and rescinded by the court on the defendant bank's own application.

- D [27] The history of the tort of malicious prosecution can be traced back to the writ of conspiracy which was in existence as early as the reign of the English King Edward I. The cause of action came to be known as malicious prosecution only during the reign of Queen Elizabeth I. It was put on firm footing in 1698 in *Savile v Roberts* 1 Ld Raym 374.

- E (see *Winfield & Jolowicz on Torts*, (15th Ed), by WWH Rogers, p 678).

[28] According to *Winfield & Jolowicz on Torts* (at p 678):

- F Liability for malicious prosecution has always had to steer a path between two competing principles - on the one hand the freedom of action that everyone should have to set the law in motion and to bring criminals to justice and on the other hand the necessity to check lying accusations against innocent people.

- G [29] In our judgment, this claim for the tort of malicious prosecution must also be dismissed. In an action for malicious prosecution, the claimant must show, among other things, that he was prosecuted by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge (*Clerk & Lindsell on Torts*, (12th Ed), pp 1070–1071, para 16–09; see also *Winfield & Jolowicz on Torts* at p 680). The plaintiff in the present case was never prosecuted on a criminal charge. What was set on motion against him was a bankruptcy proceeding.

- I [30] The plaintiff, however, relies on the case *Quartz Hill Consolidated Gold Mining Company v Eyre* (1883) 11 QBD 674 (CA) to argue that a bankruptcy proceedings against the plaintiff can be a basis for the tort of malicious prosecution. With respect, we are unable to accept this argument: *Quartz Hill Consolidated Gold Mining* is no authority for such a proposition. This case that is cited is a case of the tort of malicious civil proceeding and not a case of the tort of malicious prosecution. In this case cited the issue was whether an action

would lie for falsely and maliciously and without reasonable or probable cause presenting a petition to wind up a company, although the company had suffered no pecuniary damage besides the payment of extra costs.

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[31] The plaintiff also relies on the Court of Appeal case of *Tetuan Bee Ling & Co v Vijendran Ponniah* [2010] 6 CLJ 643 for the proposition that the tort of malicious prosecution can be based on a bankruptcy proceedings that terminated in the plaintiff's favour. With respect, in this case cited, the majority judgment clearly appreciates the difference between the tort of malicious prosecution and the tort of malicious civil proceedings (or malicious proceedings in bankruptcy); for the Court of Appeal said (at p 656):

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[13] Daripada keputusan-keputusan kehakiman tersebut di atas bolehlah dirumuskan bahawa terdapat banyak persamaan di antara tindakan bagi ganti rugi kerana kecederaan yang diakibatkan oleh permulaan sesuatu prosiding kebangkrutan secara niat-jahat dan tanpa sebab munasabah dengan tort pendakwaan niat jahat yang terbit daripada pertuduhan jenayah.

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[32] In *Tetuan Bee Ling & Co* the causes of action preferred by the plaintiff there did not include the tort of malicious prosecution but:

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- (a) the tort of malicious civil proceeding (or malicious proceeding in bankruptcy); and
- (b) the tort of abuse of process.

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[33] That is why the court based its decision on *Johnson v Emerson and Sparrow* (1870–71) LR 6 Ex 329 and *Quartz Hill Consolidated Gold Mining*. Both these cases were not cases of malicious prosecution. We have explained the cause of action in *Quartz Hill Consolidated Gold Mining*. *Johnson v Emerson and Sparrow* is a case of malicious proceedings in bankruptcy.

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[34] However, even assuming we are to examine the plaintiff's claim on the footing that his cause of action is actually the tort of malicious civil proceedings (or, malicious proceedings in bankruptcy), still the plaintiff must show absence of reasonable and probable cause (see *Jacobs v Vockrodt* [2007] EWHC 2403 (QB); and *Johnson v Emerson and Sparrow*). In the instant case it clearly cannot be said that there is absence of reasonable and probable cause as the bankruptcy proceedings was commenced by the defendant bank based on the sessions court default judgment which the plaintiff has never thought it fit to have it set aside. As long as the plaintiff has not applied to set aside the default judgment, there is in existence a valid default judgment. Indeed, the plaintiff has never pleaded that he was never served with the sessions court summons. And as long as there is a valid judgment on which the bankruptcy proceedings is based, the defendant bank has a valid basis for commencing the bankruptcy proceedings.

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A All the more so in the present case where the evidence shows that the plaintiff made the defendant bank aware of the possibility of alleged fraud having had taken place much later after the commencement by the defendant bank of the bankruptcy proceedings.

B *Appeal dismissed with costs.*

Reported by Ashok Kumar

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